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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 10, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

BILLY EDWARD TOYCEN,

Plaintiff,

v.

UNITED STATES DISTRICT COURT
and YAKIMA COUNTY SUPERIOR
COURT,

Defendants.

No. 1:22-cv-3177-MKD

ORDER DENYING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING ACTION

By Order filed December 28, 2022, the Court directed Plaintiff Billy Edward Toyen who had filed this *pro se* civil rights complaint while incarcerated at the Yakima County Jail, ECF No. 1, to show cause why his application to proceed *in forma pauperis* should be granted. ECF No. 8 at 4. In the alternative, Plaintiff was instructed that he may pay the \$402.00 fee (\$350.00 filing fee, plus \$52.00 administrative fee) for this action. *Id.* Plaintiff was cautioned that failure to do either would be construed as his consent to the dismissal of this action without prejudice for failure to comply with the filing fee requirements of 28 U.S.C. §

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION - 1

1 1914. *Id.*

2 A copy of that Order was mailed to the residential address Plaintiff provided
3 in Yakima, Washington, on December 28, 2022. ECF No. 8. Plaintiff did not
4 comply with the Court's directives and has filed nothing further in this action. He
5 did not refute the Court's finding that he had filed three or more actions that were
6 dismissed as frivolous, malicious, or for failure to state a claim upon which relief
7 may be granted. *See id.* at 3.

8 The Court finds that Plaintiff has failed to demonstrate that he is eligible to
9 proceed *in forma pauperis* under 28 U.S.C. § 1915(g), or that he was under
10 imminent danger of serious physical injury when he filed his Complaint. *See*
11 *Andrews v. Cervantes*, 493 F.3d 1047, 1055–56 (9th Cir. 2007) (discussing
12 imminent danger exception to three-strikes rule). Therefore, Plaintiff has lost the
13 privilege of filing this lawsuit *in forma pauperis*.

14 Although granted the opportunity to do so, Plaintiff did not pay the \$402.00
15 filing fee to commence this action. As a result, the Court dismisses this case
16 without prejudice for failure to comply with the filing fee requirements of 28
17 U.S.C. § 1914.

18 Therefore, **IT IS ORDERED:**

19 1. Plaintiff's application to proceed *in forma pauperis*, **ECF No. 2**, is
20 **DENIED.**

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DISMISSING ACTION - 2

2. This action is **DISMISSED WITHOUT PREJUDICE** for non-payment of the filing fee as required by 28 U.S.C. § 1914.

3. The Court certifies that any appeal of this dismissal would not be taken in good faith.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order, enter judgment, provide copies to Plaintiff at his last known address, and **CLOSE** the file.

DATED February 10, 2023.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES DISTRICT JUDGE